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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-94
	)	
SCRIPPS HOWARD BROADCASTING	)	File No. BRCT-910603KX
COMPANY	)	
	)	
For Renewal of License	)	
Station WMAR-TV	)	
Baltimore, Maryland	)	
	)	
and	)	
	)	
FOUR JACKS BROADCASTING, INC.	)	File No. BPCT-910903KE
	)	
For Construction Permit for a	)	
New Television Facility on	)	
Channel 2 at Baltimore,	)	
Maryland	)	

To: Administrative Law Judge  
Richard L. Sippel

**MASS MEDIA BUREAU'S COMMENTS ON**  
**MOTION FOR PRETRIAL RULING THAT THE "TODAY SHOW"**  
**QUALIFIES AS NEWS PROGRAMMING**

1. On October 25, 1993, Scripps Howard Broadcasting Company ("Scripps Howard") filed a motion for a pretrial ruling that the "Today Show" qualifies as news programming probative of renewal expectancy. On November 4, 1993, Four Jacks Broadcasting, Inc. (Four Jacks) filed an opposition to Scripps Howard's motion. Pursuant to the Presiding Judges Order, FCC 93M-648, released October 8, 1993, the Mass Media Bureau hereby files its comments on Scripps Howard's motion and the Four Jack's opposition.

2. In its motion, Scripps Howard contends that the Commission has already determined that the "Today Show" is a bona fide news program. Citing, Lar Daly, 40 FCC 2d 314 (1960) and

*Daly*

the Commission's Primer on Political Broadcasting and Cablecasting, 69 FCC 2d 2202, 2247 (1978) where the Commission determined that the "Today Show," as a bona fide news show, was not subject to equal opportunities for interviews of political candidates under 47 U.S.C. Section 315(a). Scripps Howard also contends that the Commission has concluded that the "Today Show" is news for purposes of the personal attack rule. Roger Langley, 45 RR 2d 1679 (1979). Finally, Scripps Howard cites a number of cases for the proposition that the Commission has granted broadcasters wide discretion in defining news and has declined to rule on whether a specific segment within a show qualifies as news.

3. In its opposition, Four Jacks argues that the Commission rulings cited by Scripps Howard are not relevant to Scripps Howard's claim of a renewal expectancy because each of those rulings were made in the context of the "equal opportunities" requirements of Section 315 or the closely related personal attack rule. None of the cases cited by Scripps Howard, Four Jacks notes, related to a comparative renewal situation. In comparative renewal cases, Four Jacks contends, ALJ's have ruled that in evaluating a program such as the "Today Show," renewal expectancy credit will only be awarded for the program's "news segments." Citing, Tri-State Broadcasting Co., Inc., 3 FCC Rcd 4874 (1988), Kaye-Smith Enterprises, 98 FCC 2d 688 (1983) and Cowles Florida Broadcasting, Inc., 78 FCC 2d 500 (1979).

4. The Mass Media Bureau is in agreement with Scripps Howard. While it is true that none of the rulings cited by Scripps Howard dealt with a station's right to a renewal expectancy, all stand for the proposition that the "Today Show" is a bona fide news show. Nothing submitted by Four Jacks warrants a conclusion to the contrary. In fact, Four Jack's sole argument is that Scripps Howard should only receive credit for those segments of the "Today Show" which deal with news. The Bureau disagrees. As Scripps Howard points out, the Commission has "declined to evaluate the relative quality or significance of the topics and stories selected for newscast coverage ...." Citizens for Reagan, 58 FCC 2d 925, 927 (1976). The Commission has stated that such determinations "would involve an unwarranted intrusiveness in program content and would be thus, at least suspect under the First Amendment ...." Paramount Pictures Corp., 3 FCC Rcd 245, 245-46 (M.M. Bureau 1988). What Four Jacks seeks would require a determination, on a segment by segment basis, of what constituted bona fide news and what did not. This would be contrary to the Commission's holding in Paramount.

5. The cases cited by Four Jacks are inapposite. In the Tri-State case, the programs in question were classified by the licensee as entertainment programs. In logging these programs the licensee did not distinguish between the entertainment and

news content of the programs. Therefore, the ALJ declined to grant the licensee credit for their broadcast. Here, the program in question is clearly news and there is no need to so distinguish. Moreover, there is no question concerning the logging of the "Today Show." In Kaye-Smith Enterprises, the ALJ simply noted that local news did not include commercial time. In Cowles, the licensee was seeking credit for the locally produced segments included in the morning network news. This case says nothing about determining which segments of a bona fide newscast constitute news and which do not. Finally, in the Bureau's opinion, this is much to do about very little. The Commission does not put much weight on quantitative analysis of programming. Rather, as the Review Board has held, "a renewal applicant is to be measured by its showing of responsiveness to community issues." Fox Television Stations, 8 FCC Rcd 2361, 2384 (1993).

6. In sum, the Bureau supports Scripps Howards request for a pretrial ruling that the "Today Show" qualifies in its totality as news programming.

Respectfully submitted,  
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November 5, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 5th day of November 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Motion for Pretrial Ruling that the "Today Show" Qualifies as News Programming"** to:

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